

REMARKS

Claims 1-16 are currently pending in the application and are subject to a restriction requirement in the outstanding Office Action. Applicant respectfully traverses the rejection.

The Office Action set forth a rejection of the claims under 35 USC 121 and 372. Specifically, the Examiner has rejected the claims as not linked so as to form a single general inventive concept. The Examiner has grouped the claims as follows:

Group I - claims 1-13, drawn to a rotatable mounted shaft member mounted between the inlet and outlet passages to allow communication with a cylinder; and

Group II - claims 14-16, drawn to method of using a rotatable shaft member for allowing an ingress and egress of combustion and combustion gases from a cylinder.

In support of this restriction, the Examiner argued that the inventions do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features. Applicant respectfully points out that the Examiner is applying the wrong law.

This application has entered the national phase and, as such, is governed by the United States national patent laws as they apply to International applications. A restriction based on the PCT rules is improper at this point and, effectively, a re-examination of the claims under International law. That is not permissible. The Examiner has no authority to second guess the International Search Authority on its unity evaluation of the claims that are pending. These claims have been examined under the PCT rules for lack of unity and have been determined to be properly combined in this application as directed to a single general inventive concept. The fact that the Examiner does not agree is no basis for issuing a restriction requirement. Article 27(1) PCT forbids a national office, during national examination, from deviating from a unity determination in the International phase.

Accordingly, it is respectfully submitted that all the claims in the present application as proper in this application. Applicant requests reconsideration and withdrawal of the restriction requirement of the claims.

As required by 37 CFR 1.143, in the event the restriction requirement is not

traversed, Applicant hereby elects Group I, claims 1-13, without prejudice to its right to appeal the underlying improper restriction.

If the Examiner believes that direct communication with the Applicant's representative with advance prosecution of this application, the Examiner is invited to contact the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert Cannuscio', written over a horizontal line.

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